

SOAH Docket No. 582-09-1971  
TCEQ Docket No. 2008-1599-IHW

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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2009 APR -3 AM 11: 57

CHIEF CLERKS OFFICE

Application by  
US ECOLOGY TEXAS, INC. for  
A Class 3 Modification to Permit and  
Compliance Plan  
IHW Permit No. 50052

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Before the  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS

### EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment on Class 3 Permit and Compliance Plan modification application (Application) and Executive Director's Preliminary Decision.

As required by Title 30, Texas Administrative Code § 55.156, before an application is approved, the Executive Director prepares a response to all timely, relevant, and material comments. The Office of Chief Clerk received timely comment letters and comments at the public meeting from the following persons:

Kenneth and Virginia Ahlrich

Lionel Lopez

Rumaldo Z. Juarez

Beth Payne

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This Executive Director's Response addresses all timely public comments received, whether or not withdrawn.

If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

**BACKGROUND**Description of Facility

U.S. Ecology Texas, Inc., (USET) currently operates a commercial hazardous and non-hazardous industrial waste solid waste management facility, which is authorized for storage, processing, and disposal. The facility conducts storage, processing, and disposal of wastes as part of the commercial operations. Wastes will be received from off-site sources on a commercial basis. The wastes managed by the facility include hazardous, Class 1, Class 2, and Class 3 industrial solid wastes. USET's facility is located on a 240-acre tract of land on Petronila Road, County Road 69, approximately 1 mile south of the intersection of Farm to Market Road 2826 and County Road 69, and approximately 3.5 miles south of Robstown, Texas, in Nueces County, Texas, 78380. The facility is in the drainage area of Segment 2492 of the Nueces-Rio Grande River Basin, North Latitude 27° 43' 43", West Longitude 97° 39' 28".

USET has applied to the TCEQ for a Class 3 modification to Permit No. 50052 for a capacity expansion through the addition of landfill Cell 50 and to extend the aerial component of proposed Cell 50 over the currently permitted Cells 43, 44, 45, and 46 for the disposal of industrial hazardous waste. The Class 3 permit modification also requests changes to the closure plan to clarify interim and final closure requirements for Cells 43, 44, 45, and 46.

USET has also applied for a compliance plan modification which authorizes and requires USET to monitor the concentration of hazardous constituents in groundwater and remediate groundwater quality to specified standards. The Class 3 compliance plan modification application requests: authorization to plug and abandon five monitoring wells, wells number 6, 13, 14, W-15, and W-16; authorization to plug and abandon a piezometer (P-1); authorization to re-install monitor well W-15B south of the former location; and authorization to install new monitoring wells, numbers 6A and W-15A proposed to be located southeast of the new landfill expansion and near the county ditch. Additionally, USET proposes, after plugging and abandonment of wells number MW-13 and MW-14, to relocate and re-install wells at or near the county ditch abutting the facility. The new wells would be named MW-13A and MW-14A. In

summary, a total of five wells and one piezometer are proposed to be plugged and abandoned and five new wells are proposed.

### Procedural Background

This application is for a Class 3 Modification to USET's permit and compliance plan. The permit application was received on September 20, 2007, and was declared administratively complete on November 13, 2007. The Notice of Receipt and Intent to Obtain a Class 3 modification was published in Spanish on November 16, 2007, in the *Corpus Christi Hispanic News*. The Notice of Receipt and Intent to Obtain a Class 3 modification was published on November 21, 2007, in the *Corpus Christi Caller-Times*. The applicant held a public meeting on December 11, 2007, in Corpus Christi. The public requested a public meeting and a contested case hearing on USET's Application. TCEQ scheduled a public meeting for September 11, 2008. Due to hurricane Ike, the meeting was cancelled and rescheduled. On October 2, 2008, and as amended on November 19, 2008, the Applicant directly referred this Application to the State Office of Administrative Hearings (SOAH) for a contested case hearing. On November 13, 2008, the Executive Director completed the technical review of the Application and issued a preliminary decision with a draft permit and compliance plan. The Notice of Application and Preliminary Decision was published in the *Corpus Christi Caller-Times* on December 30, 2008. TCEQ held a public meeting on February 17, 2009. The public comment period ended on February 17, 2009. SOAH held a preliminary hearing on February 18, 2009. Because this Application was administratively complete after September 1, 1999, this permit application is subject to the procedural requirements adopted pursuant to House Bill 801, 76<sup>th</sup> Legislature, 1999.

### Access to Rules, Laws and Records

The following web sites contain rules, laws, and other information that applies to this application.

Secretary of State website

<http://www.sos.state.tx.us/tac/index.shtml>Funder

Statutes

<http://www.capitol.state.tx.us/statutes/hs.toc.htm>

Commission records on the applicant are available for viewing and copying at TCEQ's Office of Chief Clerk's Office in Austin 12100 Park 35 Circle, Building F, 1<sup>st</sup> Floor. The Application has also been available for review and copying at the TCEQ Region 14 Office in Corpus Christi and Nueces County Public Library in Robstown, Texas.

If you would like to file a complaint, you may contact the Agency at (888) 777-3186 or you may contact the TCEQ Region 14 office in Corpus Christi at (361) 825-3100. If the facility is found to be out of compliance it may be subject to enforcement action.

## **COMMENTS AND RESPONSES**

Comments are organized under topic headings. Comments that produce the same response have been grouped together.

### **HEALTH AND SAFETY**

#### **Comment No. 1:**

Kenneth and Virginia Ahlrich commented that proposed landfill Cell 50 raises the possibility of toxic material being spread in the community and expressed concern and fear about health impacts from USET's facility. Kenneth and Virginia Ahlrich ask whether farm workers in adjoining fields or children playing outdoors are safe. Kenneth and Virginia Ahlrich ask whether farm workers in adjoining fields should wear protective gear. Kenneth and Virginia Ahlrich commented that large crowds visit the County fairgrounds and a population of 20,000 is at risk from prevailing winds. Lionel Lopez commented that Colonias residents complain of illness. Kenneth and Virginia Ahlrich commented that Mr. Kenneth Ahlrich has cancer.

**Response No. 1:**

TCEQ regulations require persons working in or near hazardous waste management units to utilize protective clothing and gear under certain circumstances. TCEQ regulations do not require protective clothing or gear to be worn outside the facility. Existing permit No. 50052 and the proposed Class 3 permit modification include operational, maintenance, and safety procedures designed to prevent potential releases and to manage any release that occurs. USET must report any release that may endanger human health or the environment to the Executive Director within twenty-four hours.<sup>1</sup> If a release occurs, USET must immediately begin cleanup and prevent surface-water or groundwater contamination.<sup>2</sup> Existing permit No. 50052 and the proposed Class 3 permit modification require USET to train its staff in the safe handling and management of industrial solid waste and municipal hazardous waste.<sup>3</sup> Existing permit No. 50052 and the proposed Class 3 permit modification, if granted, would not authorize USET to injure persons, to injure property, to invade property rights, or to infringe upon any state or local law.<sup>4</sup>

The Executive Director evaluated the safety measures in the Application, including the personnel training plan, emergency equipment, inspection schedule, and contingency plan, and determined that the Application complies with regulatory requirements<sup>5</sup>.

See also Comments and Responses Numbers 2, 3, 4, 6, 7, and 9 below for additional discussion regarding Health and Safety concerns.

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<sup>1</sup> 30 TEX. ADMIN. CODE § 305.125(9) (2009), Permit No. 50052, Section II.J., Page 18.

<sup>2</sup> Permit No. 50052, Section II.M., Page 23.

<sup>3</sup> Permit No. 50052, Section II.G., Page 22.

<sup>4</sup> 30 TEX. ADMIN. CODE § 305.122(c) (2009).

<sup>5</sup> Permit No. 50052, Sections I.J.1, II.F., and II.G, Pages 18 and 21.

**SOIL TESTING****Comment No. 2:**

Kenneth and Virginia Ahlrich commented that the land composing USET's facility was built up in 2007, and that food crops are grown on private property. They ask whether soil should be tested for toxic materials and heavy metals.

**Response No. 2:**

The existing and proposed permit No. 50052 require US Ecology to operate the facility in a manner that does not cause or contribute to environmental degradation or contaminate adjacent property.<sup>6</sup> The Executive Director is not aware of documented spills, toxic material contamination, or metal emissions from USET's facility that have contaminated soil on adjacent property. In the event of air emissions, spills or discharge of waste or contamination, USET is required to notify TCEQ and take any prompt response required.<sup>7</sup> On May 20, 2005, groundwater samples obtained from the adjacent private property were tested for hazardous constituents and chemicals of concern.<sup>8</sup> The sampling results did not indicate the presence of hazardous constituents or contaminants of concern.<sup>9</sup> Additionally, data collected from groundwater compliance monitoring wells located out side the slurry wall but within the facility boundaries have not indicated migration of contamination out side slurry wall that encompasses the facility's boundaries.<sup>10</sup> USET submits this information as part of the semi-annual groundwater reports submitted to TCEQ every six months.<sup>11</sup> If contamination is detected, the Executive Director may require sampling of the soil from adjacent properties and USET may be subject to enforcement and /or corrective action.

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<sup>6</sup> 30 TEX. ADMIN. CODE § 335.4 (2008), Permit No. 50052, Section II.B., Page 20.

<sup>7</sup> 30 TEX. ADMIN. CODE § 305.145 (2009), Permit No. 50052, Section II.K and II.M., Pages 20, 21..

<sup>8</sup> Complaint Investigation Report No. 397257, Incident Report No. 58600, May 20, 2005.

<sup>9</sup> *Id.*

<sup>10</sup> Semi-Annual Groundwater Monitoring Corrective Action Reports from 1990 through 2009.

<sup>11</sup> Compliance Plan No. 50052, Section VII.B., Page 17.

**AIR QUALITY****DUST****Comment No. 3:**

Lionel Lopez commented that USET's facility creates dust. Kenneth and Virginia Ahlrich commented that on November 29, 2008, dust from USET's facility contaminated their property causing them to suffer flu like symptoms and that this incident was reported to TCEQ. Kenneth and Virginia Ahlrich commented that the Nueces county sheriff's department responded when a cloud of silicate compounds passed over his house and that silicate compounds can cause nervous system damage, Alzheimer's disease, and lung disease. Kenneth and Virginia Ahlrich commented that unidentified dust and smoke particles from USET's facility infiltrate their air conditioning and home.

**Response No. 3:**

Existing and proposed permit No. 50052 require USET to operate the facility in a manner that does not cause or contribute to air pollution and/or dust.<sup>12</sup> USET's draft permit falls under state and federal regulations that govern industrial solid waste and municipal hazardous waste, and some of those regulations address particular air emission standards for process vents, equipment leaks, tanks, and containers at waste-management facilities.<sup>13</sup> Existing and proposed permit No. 50052 address those particular air emission standards.<sup>14</sup> In addition, the hazardous waste permit requires USET to cover any treated hazardous waste disposed in the landfill with soil or liquid clay product or foam to minimize dust.<sup>15</sup>

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<sup>12</sup> Tex. Health and Safety Code Ann. Section 382.003 and 382.085, Permit Sections I.G.7 and II.S.1, Pages 13 and 25.

<sup>13</sup> Permit No. 50052, Section, I.G.7 Page 13, (requiring USET to comply with 30 TEX. ADMIN. CODE § 335.152(a)(17)-(19),(2008) (which refers to compliance with 40 C.F.R. Part 264, Subparts AA, BB, and CC.).

<sup>14</sup> 30 TEX. ADMIN. CODE § 335.152(a)(17)-(19) (2008), Permit No. 50052, Sections I.G.7. Page 13.(40 C.F.R. Part 264, Subparts AA, BB, and CC).

<sup>15</sup> Permit No. 50052, Section V.D.3.b., Page 42.

In addition to the facility's hazardous-waste permit, TCEQ regulates the facility's compliance with the Texas Clean Air Act under the facility's air permit and/or authorizations. USET's air permit and/or authorizations address issues such as air pollution, air modeling, air monitoring, and emission control. The issues related to USET's air permit and/or authorizations and air pollution issues related to dust, smoke, and odor are outside the scope of review for this Application. Any air pollution issues, releases, or violations at the USET facility will be addressed through air permits other authorizations, and/or through enforcement actions.

TCEQ is conducting an investigation of the complaint of dust from the facility on November 29, 2008.<sup>16</sup>

See also Responses Numbers 1 above, and 4, and 11 below.

## **EMISSIONS**

### **Comment No. 4:**

Kenneth and Virginia Ahlrich commented that on March 24, 2008, chlorine gas leaked at USET's facility, ¼ mile from their residence, requiring evacuation, sickening people, and causing a child to be hospitalized.

### **Response No. 4:**

The TCEQ has investigated and inspected complaints about dust, odor, and upset releases including reported chlorine release at USET's facility March 31, 2008.<sup>17</sup> TCEQ is currently pursuing releases and/or any potential violations through enforcement proceedings.<sup>18</sup>

See also Response Numbers 1 and 3 above and 11 below.

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<sup>16</sup> TCEQ Investigation Report, Investigation No. 709525, Incident No. 119242, Conducted on December 4, 2008.

<sup>17</sup> TCEQ Summary of Investigative Findings, Investigation No. 653211, Feb. 19, 2008.

<sup>18</sup> Proposed Enforcement Docket Number 2008-0355-MLM-E.

**ODOR****Comment No. 5:**

Kenneth and Virginia Ahlrich commented that strong acidic odors from USET's facility infiltrate their air conditioning and home.

**Response No. 5:**

TCEQ rules require USET to operate the facility in a manner that does not create nuisance conditions.<sup>19</sup> Complaints regarding odor should be directed to TCEQ's Region 14 Office in Corpus Christi at (361) 825-3100. TCEQ also maintains a twenty-four-hour hotline at (888) 777-3186. When Region 14 receives a complaint, staff conducts an investigation. You can request a copy of an investigation report by calling the Region 14 Office.

For information on TCEQ's odor complaint investigation procedures, interested persons are encouraged to visit TCEQ's Web site at:

[http://www.tceq.state.tx.us/compliance/complaints/protocols/odor\\_protopdf.html](http://www.tceq.state.tx.us/compliance/complaints/protocols/odor_protopdf.html).

The Executive Director evaluated the Application and the compliance history for USET and for the facility and determined that the Application complies with regulatory requirements.

See also Response Numbers 1, 3, and 4 above.

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<sup>19</sup> 30 TEX. ADMIN. CODE §§ 335.4, 335.177 (2008).

## **AIR MONITORING**

### **Comment No. 6:**

Kenneth and Virginia Ahlrich commented that independent air monitoring was promised five years ago and never installed. Kenneth and Virginia Ahlrich ask whether air monitors should be installed near USET's facility.

### **Response No. 6:**

Permanent air monitors at the facility boundary are not required by the solid waste rules, the Application, or the draft permit. As stated under Response No. 3 above, USET's air permits and authorizations regulate air emissions from the facility.

The issues related to USET's air permit and/or authorizations and air pollution issues related to dust, smoke, and odor are outside the scope of review for this Application.

The Executive Director is uncertain what promise the commentor is referencing in this comment. If this comment is referencing terms of a third party settlement agreement, TCEQ was not party to any settlement agreement and has neither agreed to conduct nor acquired obligation to conduct additional air monitoring not required by regulations or statutes.

See also Response Number 3 above.

## **GROUNDWATER**

### **GROUNDWATER CONTAMINATION**

#### **Comment No. 7:**

Lionel Lopez and Kenneth and Virginia Ahlrich expressed concern about contamination of groundwater. Kenneth and Virginia Ahlrich commented that groundwater pollution has been

detected near the Northeast corner of USET's facility and that groundwater contamination in their 350 foot deep water well requires them to haul their drinking water from town.

**Response No. 7:**

Existing and proposed Permit No 50052 require USET to operate the facility in a manner that minimizes the possibility of a fire, explosion, or any unplanned, sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health and environment.<sup>20</sup> The compliance monitoring and corrective action program of the compliance plan require monitoring of historic groundwater contamination at the site and submission of monitoring and analysis reports to TCEQ for review.<sup>21</sup> Groundwater contamination at the facility is attributed to historic waste management operations, leaks from damaged evaporation pond liners operated at the facility in the 1970's, and leaks from petroleum pipelines in the vicinity of the facility.

Contamination attributed to historic operations was detected in groundwater in the first groundwater zone. Consequently, a compliance plan was issued to USET under which USET has conducted corrective action and compliance monitoring at the facility. The compliance plan requires USET to monitor contaminants of concern including volatile and semi volatile organic compounds and metals. The Compliance Plan includes a complete list of contaminants of concern.<sup>22</sup>

For the purpose of minimizing migration of contamination outside the facility boundary, a constructed slurry wall surrounds the existing waste management units and proposed Cell 50.<sup>23</sup> Groundwater samples collected from several monitor well pairs inside and outside the slurry wall appear to indicate that groundwater contamination is confined to the shallow first groundwater zone within the facility. Sampling results indicate that the groundwater contamination at the site is apparently well defined and contained within the facility boundary. Additionally, a system of

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<sup>20</sup> 30 TEX. ADMIN. CODE §§ 335.4, 335.152(a)(2) (2008), Permit Section II.B., Page 20.

<sup>21</sup> Compliance Plan Application, October 29, 1996, and Revisions.

<sup>22</sup> Compliance Plan No. 50052, Table 3, Page 28

<sup>23</sup> Compliance Plan, No. 50052, Section II. B., and V., Pages 4 and 9 respectively.

recovery wells located in the facility interior extracts groundwater for the purpose of ensuring that groundwater flow is directed towards the interior of the facility, and to prevent contaminated groundwater from moving laterally towards slurry wall.

A deeper second groundwater zone, underneath the facility, is separated from the upper first groundwater zone by a clay layer. The monitor wells that monitor the deeper second groundwater zone appear to have not been contaminated from contamination present in the first groundwater zone.<sup>24</sup> Because drinking water wells are located in the deeper groundwater zones, the absence of any contamination in the second groundwater zone appears to indicate that contamination has not migrated outside the facility boundaries. Groundwater contamination is apparently confined to the first groundwater zone which is totally enclosed by a slurry wall. Additionally, USET is required to operate groundwater recovery wells to remove any contamination in the first groundwater zone. USET is currently monitoring groundwater in accordance with the compliance plan.<sup>25</sup>

The Executive Director has evaluated the Application and determined that the proposed Compliance Plan satisfies the regulatory requirements.

## **GROUNDWATER MONITORING**

### **Comment No. 8:**

Kenneth and Virginia Ahlrich commented that USET proposes a reduced number of monitoring wells and piezometers in the Application, that the proposed monitoring is insufficient, and asked if the proposed monitoring will pose a problem.

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<sup>24</sup> Compliance Plan, No. 50052, Section VIII.B., Page 17.

<sup>25</sup> Compliance Plan, No. 50052, Section VI, Page 11.

**Response No. 8:**

TCEQ rules require facilities subject to compliance monitoring to monitor groundwater at least semiannually and submit the report semiannually to the TCEQ.<sup>26</sup> USET is subject to this requirement, and has been submitting the semiannual groundwater monitoring reports in compliance with the compliance plan.<sup>27</sup> The compliance plan imposes an on going obligation that USET continue submitting this report in the future.<sup>28</sup> The semiannual reports provide the nature and extent of groundwater contamination, groundwater elevations, groundwater flow and direction, groundwater quality, and other information as required by the compliance plan.<sup>29</sup>

The proposed Class 3 permit and compliance plan modifications request to plug and abandon monitoring wells, MW 6, MW13, MW14, W-15, and W-16, and Peizometer P-1 because these wells and this peizometer are located in the footprint of the proposed Cell 50.<sup>30</sup> If the plugging and abandonment of these wells is approved, new monitoring wells, MW-6A, MW-13A, MW-14A, and W-15 A, and W-15 B will be installed to replace the existing wells. In addition to the wells listed above, compliance monitoring and corrective action groundwater monitoring wells are capable of monitoring groundwater elevation at the facility.<sup>31</sup> Peizometer (P-1), is located within the footprint of the proposed Cell 50 and is used primarily for groundwater elevation measurements. Elimination of P-1 should not adversely impact the effectiveness of the groundwater monitoring because additional monitoring wells at the facility outside of the footprint of Cell 50 may be used for groundwater elevation measurements.<sup>32</sup> Additionally, the proposed changes require USET to plug the wells according to a staggered schedule as and when construction of Cell 50 advances. The proposed phased plugging and relocation schedule will allow USET to collect additional data until such time that the Landfill Cell 50 is constructed.

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<sup>26</sup> 30 TEX. ADMIN. CODE §§ 335.165, and 335.166 (2008).

<sup>27</sup> Compliance Plan, No. 50052, Section VII.B.2, Page 17, Semi Annual Compliance Monitoring Reports.

<sup>28</sup> Compliance Plan, No. 50052, Section VII.B.2, Page 17.

<sup>29</sup> Compliance Plan, No. 50052, Section VII.B.2, Page 17.

<sup>30</sup> Permit and Compliance Plan No. 50052, Application, August 2007, Vol. 2, Attachment 7, Page 3, and Draft Compliance Plan, No. 50052, Section IX.E, Compliance Schedule.

<sup>31</sup> Draft Compliance Plan, No. 50052, Table III, Page 30

<sup>32</sup> 30 TEX. ADMIN. CODE § 335.161, 335.163(2) (2008), and Compliance Plan No. 50052, Section III.E.4.

The rules require installation of monitoring wells sufficient to provide monitoring data at the point of compliance.<sup>33</sup>

The Executive Director evaluated the Application and determined that the proposed changes in the number and location of monitoring wells satisfy the regulatory requirements.

See also response Number 8 above.

## **FLOODING**

### **Comment No. 9:**

Rumaldo Z. Juarez commented that levees will not stand a 100-year flood event and expressed concern about safety in case of flooding. Lionel Lopez commented that USET's facility subjects Colonias to toxic waste and increased danger during flooding from heavy rains.

### **Response No. 9:**

The requirements for 100-year flood event are that the landfill be designed, constructed, operated, and maintained to prevent physical transport of any hazardous waste by a 100-year flood event.<sup>34</sup> The rules and permit requires flood protection measures and devices to prevent washout of hazardous wastes from a 100-year flood event.<sup>35</sup> The hazardous waste management units at the USET's facility have control measures to minimize any hazardous wastes or constituents entering the stormwater drains and creek. The waste management units such as tanks and storage areas are designed, constructed, and operated to prevent stormwater run-on and run-off to and from the units to prevent washout of hazardous wastes. The proposed Cell 50 is surrounded by perimeter berms and drainage ditches to prevent stormwater run-on and run-off to and from Cell 50 and to prevent washout of hazardous wastes.<sup>36</sup> Any accidents and/or hazardous

<sup>33</sup> 30 TEX. ADMIN. CODE §§ 335.161–163 (2008),

<sup>34</sup> 40 CFR §270.14 (b)(11) (2006) , and 30 TEX. ADMIN. CODE § 335.204 (e) (2008).

<sup>35</sup> 30 TEX. ADMIN. CODE § 335.204 (e) (2008), Permit No. 50052, Section V.D.1.h., Page 36 of 76.

<sup>36</sup> Permit and Compliance Plan No. 50052, application Vol. 2 of 2, Appendix I, August 20, 2007.

waste spills at the facility that may affect storm water ditches or creeks at the facility must be immediately cleaned and reported to the TCEQ.<sup>37</sup>

In addition to the facility's hazardous-waste permit, TCEQ regulates the facility's compliance with the Texas Clean Water Act under the facility's Texas Pollutant Discharge Elimination System (TPDES) permit. The TPDES permit is outside the scope of review for the Application for Class 3 permit and compliance plan modification of Permit and Compliance Plan No. 50052. USET's TPDES permit authorizes discharge of uncontaminated storm water on an intermittent and flow variable basis via discharge Outfalls 001, 002, 003, and 004.<sup>38</sup> Under the TPDES discharge permit, USET is not authorized to discharge any leachate from landfills, contaminated stormwater from process areas, hazardous waste, or hazardous constituents into stormwater drains or creeks.<sup>39</sup> USET's TPDES permit includes monitoring requirements for discharges through any of the permitted outfalls during normal and/or during storm events.<sup>40</sup> If contamination or evidence of contamination is detected in stormwater drains or creeks, USET will be subject cleanup and corrective action requirements under the compliance plan and may be subject to enforcement.<sup>41</sup> Because the Executive Director is not aware of any evidence of contamination in the drainage ditches or creek, monthly monitoring of the drains or creeks is not required by draft permit and compliance plan No 50052 unless otherwise required by the TPDES discharge permit.

See also Responses Numbers 1, 2, and 8 above.

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<sup>37</sup> Permit No. 50052, Sections II.K., and II.M, Pages 22 and 23.

<sup>38</sup> TPDES Permit No. WQ 0002888000, Item 4, Page 12.

<sup>39</sup> 30 TEX. ADMIN. CODE § 335.4. (2008), Permit Sections II.B., and II.I., Pages 20 and 21.

<sup>40</sup> TPDES Permit No. WQ 0002888000, Item 3, Page 12.

<sup>41</sup> Compliance Plan No. 50052-001, Section 1, E, Page 3.

**SURFACE WATER QUALITY****Comment No. 10:**

Kenneth and Virginia Ahlrich commented that rain runoff from the proposed cell will flood their property and ask whether runoff should be controlled. Kenneth and Virginia Ahlrich commented that a drainage ditch on the west side of USET's facility is at risk for contamination and that runoff from the facility affects South Nueces County's crops, land, domestic animals, wildlife, and residents along the drainage ditch, creeks, and in the Baffin Bay vicinity. Kenneth and Virginia Ahlrich commented that September rains require weekly monitoring. They stated that requests for ditch monitoring after heavy rainfalls have been made in the past, and ask whether ditches and water wells shouldn't be monitored more frequently suggesting a frequency of once a month instead of twice a year.

**Response No. 10:**

Existing and proposed Permit 50052 require USET to manage any stormwater that comes in contact with the waste inside the landfill as hazardous and/or industrial waste.<sup>42</sup> USET may dispose contaminated stormwater after treatment in an authorized on-site underground injection control well or at an authorized off-site waste management facility.<sup>43</sup> The existing and proposed stormwater management system is designed and operated to minimize any contaminated stormwater from leaving the facility boundary.<sup>44</sup> USET submitted storm water management plan for the proposed Cell 50 as part of the permit Application.<sup>45</sup> The Application indicates that the natural drainage in the area is characterized by flat slopes, which generally drain toward the Nueces County Drainage Ditch No. 1.<sup>46</sup> Because of the natural terrain, some uncontaminated rainfall runoff may drain to adjacent land out side the facility during inundation from heavy

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<sup>42</sup> Permit No. 50052, Sections V.D.1.d-h, Page 36.

<sup>43</sup> Permit No. 50052, Sections V.D.1.d-h, Page 36.

<sup>44</sup> Permit Provisions II.B., II.I, V.D.1.d.- h., Pages 20, 21, and 36 respectively..

<sup>45</sup> Class 3 Permit Application, Vol. 2, Appendix I.

<sup>46</sup> Class 3 Permit Application, Vol. 2, Appendix I.

rains.<sup>47</sup> The existing waste management units at the facility, such as tanks and container storage areas, include secondary containment and are designed to prevent stormwater run-on or run-off and minimize contamination of storm water.<sup>48</sup> The facility has constructed perimeter berms and dikes designed to prevent flooding, including a 100-year flood event, and the facility is designed to control run-off and run-on into and from the existing and/or proposed landfill cells.<sup>49</sup> The existing and proposed stormwater drainage system surrounding the units is designed to collect and discharged all uncontaminated stormwater in accordance with USET's discharge permit.<sup>50</sup> TCEQ rules do not require weekly surface water monitoring.

The Executive Director evaluated Application and determined that stormwater management proposed in the Application satisfies the regulatory requirements.

See also Responses No. 1, 2, 8, and 9 above.

## **COMPLIANCE HISTORY**

### **Comment No. 11:**

Kenneth and Virginia Ahlrich commented that USET's facility has a history of violations including twenty violations and fines of \$138,000.00 over the past year. They commented that US Ecology Texas, Inc. cannot be trusted to self monitor and that the facility is too large to monitor

### **Response No. 11:**

Prior to issuance of a permit or compliance plan, the Executive Director prepares a compliance history for the applicant and the facility. The compliance history covers the five-year period immediately preceding the date the Executive Director receives the Application. The

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<sup>47</sup> Class 3 Permit Application, Vol. 2, Appendix I.

<sup>48</sup> Permit No. 50052, Sections II.B., II.I., III.G., IV.D., and V.D.1.d.-h, Pages 20, 21, 27, 30, and 36.

<sup>49</sup> Class 3 Permit Application Vol. 2, Appendix I.

<sup>50</sup> TPDES Permit No. WQ 0002888000.

compliance history includes multimedia compliance-related components that include enforcement orders, consent decrees, court judgments, criminal violations, chronic excessive emissions events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution-reduction programs, and early compliance.

A facility may have one of the following classifications:

High:	above-average compliance
Average by Default:	classification for sites that have never been investigated
Average	general compliance
Poor	below-average compliance

The Executive Director reviewed the compliance history for the USET for the period of 5 years from October 31, 2003, through October 31, 2008. The compliance history classification compiled for USET during the technical review of this Application is average.<sup>51</sup> USET's compliance history will be taken into consideration prior to issuance of any permits or authorizations by TCEQ. If USET is issued this permit, the permit would not authorize USET to injure persons, to injure property, to invade property rights, or to infringe upon any state or local law.<sup>52</sup>

The Executive Director evaluated the Application and the compliance history for USET and for the facility and determined that the Application complies with regulatory requirements.

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<sup>51</sup> Compliance History date October 31, 2008.

<sup>52</sup> 30 TEX. ADMIN. CODE § 305.122(c) (2009).

**TRAFFIC AND ACCESS****Comment No. 12:**

Lionel Lopez expressed concerns about safety of hazardous waste near Colonias residents' homes, churches, and schools. Kenneth and Virginia Ahlrich commented that in 2007, trucks transporting waste were observed enter and exiting the facility via FM 892 and CR 30 and that the trucks caused a large amount of dust to drift over homes and property. Kenneth and Virginia Ahlrich ask whether this use of FM 892 and CR 30 has been documented.

**Response No. 12:**

The Legislature established TCEQ's jurisdiction over waste management in the Texas Solid Waste Disposal Act. TCEQ does not have jurisdiction to consider transportation routes when determining whether to approve or deny an application for a capacity expansion of an existing hazardous waste landfill. TCEQ rules do not require an application of this type to include transportation routes for waste delivery. The TCEQ does not maintain records of the vehicles entering and exiting USET's facility. TCEQ rules require USET to operate the facility in a manner that does not create nuisance conditions.<sup>53</sup> TCEQ regulatory jurisdiction does not affect or limit the ability of a landowner to seek relief from court or other agencies.

See also Response No. 3, 4, and 5 above.

**SITING****Comment No. 13:**

Lionel Lopez commented that Colonias residents purchased their property without knowledge of USET's facility less than a mile away. Lionel Lopez expressed concern that USET's facility is expanding closer to residents' homes. Kenneth and Virginia Ahlrich commented that their house

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<sup>53</sup> 30 TEX. ADMIN. CODE §§ 335.4, and 335.177 (2008).

is located within ¼ mile from the facility, that Cell No 50 is too close to residential property, that more than fifty families live in the surrounding area, and that the Robstown city limits is located ½ mile from USET's facility. Kenneth and Virginia Ahlrich commented that an explosion and fire two years ago at USET's facility blew out the north wall of the old mixing building at the facility and ask what would happen if an explosion occurred in the new mixing building that is only ¼ mile from their house. Kenneth and Virginia Ahlrich expressed fear for their safety and commented that if there is an explosion at USET's facility, and they survive the explosion, that they will have to move. Kenneth and Virginia Ahlrich commented that a hazardous waste maintenance building is being constructed near his house

**Response No. 13:**

TCEQ rules prohibit issuance of a permit for a new commercial hazardous-waste management facility if that facility would be located within one-half mile of an established residence, church, school, day-care center, surface-water body used for a public drinking water supply, or dedicated Public Park.<sup>54</sup> This prohibition applies to applications for new facilities and applications that seek to expand the area of existing facilities. USET is an existing facility that has been in operation since 1980. Because USET's Application requests a capacity expansion through addition of Cell 50 for an existing facility and does not seek to expand the area of the facility, the siting requirements do not prohibit addition of the new cell in this location.<sup>55</sup>

Texas Solid Waste Disposal Act and TCEQ rules prohibit USET from operating in a manner that endangers public health and welfare.<sup>56</sup> This prohibition applies to new facilities and to existing facilities, whether those facilities are close to or far from residential properties. Additionally, if USET is issued this permit, the permit would not authorize USET to injure persons, to injure property, to invade property rights, or to infringe upon any state or local law.<sup>57</sup>

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<sup>54</sup> 30 TEX. ADMIN. CODE § 335.205(a)(3)-(4) (2008).

<sup>55</sup> *Id.*

<sup>56</sup> Tex. Health & Safety Code Ann. § 361.002 (2001), 30 TEX. ADMIN. CODE § 335.4 (2008).

<sup>57</sup> 30 TEX. ADMIN. CODE § 305.122(c).

However, TCEQ regulatory jurisdiction does not affect or limit the ability of a landowner to seek relief from a court and/or other avenues in response to activities that interfere with the landowner's use and enjoyment of his property.

The Executive Director evaluated the safety measures in the Application, including the training program, emergency response plan, and fire suppression system, and determined that the Application satisfies the regulatory requirements.

## **ENVIRONMENTAL JUSTICE**

### **Comment No. 14**

Kenneth and Virginia Ahlrich asked why USET's facility is located in an economically depressed area with a large number of minorities. Lionel Lopez commented that Colonias residents live with substandard living conditions, inadequate infrastructure, and inadequate drainage. Lionel Lopez commented that and that US Ecology Texas Inc's facility subjects Colonias to toxic waste and increased danger during flooding from heavy rains.

### **Response No. 14:**

When evaluating permits, the TCEQ takes into consideration the surrounding community regardless of its socioeconomic or racial status. Although there are no TCEQ rules addressing environmental equity issues such as the location of permitted facilities in areas with minority and low-income populations, disparate exposures of pollutants to minority and low-income populations, or the disparate economic, environmental, and health effect on minority and low-income populations, the TCEQ has made a strong policy commitment to address environmental equity by creating an environmental equity program within the Office of Public Assistance. This program works to help citizens and neighbourhood groups participate in the regulatory process; to ensure that agency programs that may affect human health or the environment operate without discrimination; and to make sure that citizens' concerns are considered thoroughly and are

handled in a way that is fair to all. Individuals may contact the Office of Public Assistance can be reached at 1-800-687-4040 or at the following address, phone or fax numbers:

Environmental Equity (MC-108)  
Texas Commission on Environmental Quality  
P.O. Box 13087 Austin, TX 78711-3087  
(512) 239-4000  
(512) 239-4007 (fax)  
opa@tceq.state.tx.us (E-mail)

Additional information can be found at [www.tceq.state.tx.us/comm\\_exec/opa/envequ.html](http://www.tceq.state.tx.us/comm_exec/opa/envequ.html)

See Responses Numbers 1. 9. and 10.

## **HOURS OF OPERATION**

### **Comment No. 15:**

Kenneth and Virginia Ahlrich commented that residents on the east side of the facility complain of loud noise and bright lights at night. Kenneth and Virginia Ahlrich commented that loud noise from heavy machinery is heard at 6:30 AM on Sunday.

### **Response No. 15:**

Existing Permit No. 50052, Section IX.A., prohibits USET from conducting operational or construction activities requiring the use of heavy machinery or flood lights between 8:00 PM and 7:00 AM unless an enumerated exception applies and USET provides notice to TCEQ Region 14 Office in accordance with the permit provision.<sup>58</sup> There are no changes to this permit provision in existing Permit No. 50052 in the proposed draft permit for Class 3 permit and compliance plan modification.

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<sup>58</sup> Permit No. 50052, Section IX.A., Page 74.

The Legislature established TCEQ's jurisdiction over waste management in the Texas Solid Waste Disposal Act. TCEQ does not have jurisdiction to consider noise when determining whether to approve or deny an application. Concerns regarding noise should be directed to local authorities. TCEQ regulatory jurisdiction does not affect or limit the ability of a landowner to seek relief from court or other agencies.

See also Response No. 5 above.

### **PROPERTY VALUES**

#### **Comment No. 16:**

Kenneth and Virginia Ahlrich commented that USET's facility negatively impacts property values. Kenneth and Virginia Ahlrich commented that farm land has been destroyed.

#### **Response No. 16:**

The Legislature established TCEQ's jurisdiction over waste management in the Texas Solid Waste Disposal Act. TCEQ does not have jurisdiction to consider the effects on property values when determining whether to approve or deny an application.

### **ORIGIN OF WASTE**

#### **Comment No. 17:**

Rumaldo Z. Juarez commented that Nueces County receives waste from all over Texas.

**Response No. 17:**

The Legislature established TCEQ's jurisdiction over waste management in the Texas Solid Waste Disposal Act. TCEQ does not have jurisdiction to consider the origin of waste when determining whether to approve or deny an application.

**RECOMMEND DENIAL**

**Comment No. 18:**

Kenneth Ahlrich, Virginia Ahlrich, Lionel Lopez, and Rumaldo Z. Juarez recommend denying the Application.

**Response No 18:**

TCEQ approves or denies permit applications based on an applicant's adherence to state and federal requirements. An application can be denied if it raises significant technical or regulatory concerns.

**RECOMMEND ISSUANCE**

**Comment No. 19:**

Beth Payne commented in support of granting the Application. Beth Payne commented that Texas needs waste disposal capacity in this area, that USET plays an important role in waste disposal.

**Response No. 19:**

The Executive Director recognizes receipt of these comments.

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G.  
Executive Director

Stephanie Bergeron Perdue ,  
Deputy Director, Office of Legal Services

Robert Martinez  
Director, Environmental Law Division

A handwritten signature in cursive script, reading "Diane Goss".

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Diane Goss, Staff Attorney  
TCEQ Environmental Law Division  
State Bar No. 24050678  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
(512) 239- 5731

REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on April 6, 2009, a copy of "Executive Director's Response to Public Comment" was filed with the Texas Commission on Environmental Quality Office of the Chief Clerk and a copy was conveyed to the judge, attorneys, and parties identified on the attached service list by the methods indicated.



J. Diane Goss, Staff Attorney  
Environmental Law Division  
State Bar No. 24050678

~~TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 APR - 3 AM 11: 57  
CHIEF CLERKS OFFICE~~  
TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 APR - 6 AM 11: 57  
CHIEF CLERKS OFFICE

SERVICE LIST  
US Ecology, Inc.  
SOAH Docket No. 582-09-1971  
TCEQ Docket No. 2008-1599-IHW

The Honorable Thomas H. Whalston  
Administrative Law Judge  
State Office of Administrative Hearings  
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Austin, Texas 78701  
*Via facsimile*

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(512) 495-6093(facsimile)  
*Representing US Ecology Texas, Inc.*  
*Via facsimile and U.S. Mail*

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*Protestant*  
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David Yepez  
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Zulema Zapata  
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606 N. Carancanua, Suite 103A  
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*Via Facsimile*